

## **REMARKS**

Applicant has amended original claim 1 as suggested by the Examiner.

Applicant has added no new matter as defined within the scope of 35 USC 132.

Applicant thanks the Examiner for withdrawal of the claim rejections made in the previous Office Action. Applicant submits the following remarks in response to the new rejections brought up in the present Office Action.

### **1. Rejection of Claims 1, 2 and 4 to 6 Under 35 USC Section 103(a)**

The Examiner has rejected claims 1, 2 and 4 to 6 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,270,448 to Smith ("Smith") in view of US Patent No. 5,536,229 to Albergo ("Albergo"). Applicant respectfully traverses this rejection and requests withdrawal thereof.

Section 103(a) states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the difference between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Applicant reiterates the arguments made in response to the previous Office Action and adds that Smith, either alone or in combination with Albergo, does not teach, disclose or suggest an exercise apparatus for kicking and stretching having an elongate member with opposed free extents wherein intussusceptible portions are provided in combination with a reciprocatingly slidable leg connector and a cross member supported on an upper free extent of said support member with a limb support portion protruding from a top surface thereof. Smith teaches multiple embodiments of a leg stretching device wherein each embodiment has at least four support members. The object of the Smith disclosure is "to provide a stretching device that may be used by a person to stretch the major leg

muscles on a single device and in an easy, comfortable and efficient manner” (see Smith, column 1, lines 24 to 27).

Referring particularly to Figure 1 of Smith, which shows the first preferred embodiment of the claimed invention, support member 14 of Smith lacks intussusceptible portions that comprise a longitudinal body and are slidable with respect to one another and further relative to a lower body portion of the longitudinal body, thereby effecting height adjustment. Smith provides height adjustment not for the support member but for one or more of handle member 56 at an upper extent thereof and leg support members 72 disposed along a length of support member 14. Although it is true that Smith shows multiple members 56 and 72 disposed in a generally cantilever fashion, none of these members is disposed at an upper free extent of support member 14 and in normal relation therewith, with such cross member including a limb support portion protruding from a top surface thereof and having a curvature to support a limb thereon. A user of the Smith apparatus may move handle member 56 up and down along the length of support member 14 to adjust the height of the handle grasping portion (“Handle members 56 are adapted to be easily and comfortably grasped by the person...and although shown in FIG. 1 as being fixed to the support member 14, the handle member 56 shown in FIG. 6 may be adjustab[ly] mounted at various portion[s] of the support member 14”, see Smith, column 2, lines 55 to 61). Grasping occurs with the hands and there is no intention by Smith to support a limb on handle members 56. Handles by definition are intended for gripping with one or more digits, and nowhere does Smith teach, disclose or suggest that handle 56 have a curvature for support of a limb thereon.

In addition, none of leg support members 72 is intended for placement as a cross members at an upper free extent of support member 14. As Smith states, “Each of leg support members 72 may be selectively position[ed] along the vertical height of the support member 14 at any one of the openings 20” (see Smith, column 3, lines 24 to 26). Smith therefore does not teach, disclose or suggest Applicant’s invention as claimed by claim 1 and claims 2, 4, 5 and 6 depending directly therefrom.

With particular reference to claim 4, Applicant respectively submits that Smith is silent with respect to the sliding capabilities of mounting bracket 30 shown in Figure 1 except to say that “the base member 22 comprise a first leg 24, a second leg 26, a third leg 28 and a mounting bracket 30 integrally formed into a tripod configuration” (see Smith, column 2, lines 28 to 31, emphasis added). This language suggests that the tripod elements must be provided as a unitary structure that does not facilitate movement of bracket 30 along support member 14. In addition, providing such sliding movement to bracket 30 is redundant in view of the Smith’s intention to adjust the exercise height via linear displacement of one or more of handle member 56 and leg support members 72 to effect height adjustment. Smith, in the embodiment illustrated in Figure 10, thereof, specifically provides that “the upper end portions 120 of support member[s] 114, 116 and 118 are securely connected together to provide a non-collapsible structure” (see Smith, column 4, lines 13 to 15, emphasis added). Having a movable bracket, therefore, in any of the Smith embodiments, teaches away from Smith’s disclosure wherein adjustment of the handles and leg support members themselves acknowledges exercise height considerations.

There is no motivation for a person of ordinary skill in the exercise arts to combine Smith with Albergo, as such combination would obviate the ceiling-to-floor securement characteristics of the latter while detracting from the exercise malleability of the former. Albergo requires coupling of the disclosed stretching device between ceilings or doorways and the ground (“The increased friction created by the rubber end caps 24 and 26 provides safe and stable attachment to the ceiling 16 and floor 18 respectively”, see Albergo, column 3, lines 60 to 62). Although claim 1 of Albergo does not require either a ceiling mount or floor mount, the Albergo device would not function as intended without at least one such mount. Such mounts are neither intended nor warranted by Smith, and a person of ordinary skill in the art would not look at either reference, either alone or in combination, to disclose, teach or suggest the present invention as claimed in claims 1, 2 and 4 to 6.

## **2. Rejection of Claim 3 Under 35 USC 103(a)**

The Examiner has rejected Claim 3 as being unpatentable over Smith in view of Albergo and further in view of US Patent No. 2,469,301 to Johnston (“Johnston”). Applicant reiterates the above arguments and adds that the rotatable handle of Johnston would negatively deviate from the objectives of Smith and Albergo, either alone or in combination thereof. As noted above, Smith discloses a device wherein height adjustment is effected by slidable removal and placement of one or more of a handle member 56 and leg support members 72, rather than adjustment of mounting bracket 30 or incorporation of telescoping members in support member 14. Thus, the only use for a rotating handle with the Smith device is for securement of one of the handle and leg support members. In addition, use of a rotating handle in Albergo would secure the free extents of the device between a ceiling and a wall. As noted above, there is no disclosure, suggestion or teaching by Smith wherein securement of the free extents of the Smith device to floor and ceiling surfaces is required for use of the disclosed invention. Since the combination of Smith and Albergo in of itself does not obviate the present invention as claimed in claims 1 and 2, addition of a rotating handle does not change this conclusion and therefore does not render claim 3 obvious.

## **3. Rejection of Claim 7 Under Section 103(a)**

The Examiner has rejected Claim 7 as being unpatentable over Smith in view of Albergo and further in view of US Patent Application No. 2005/0101453 to Jeneve et al. (“Jeneve”). Applicant reiterates the above arguments and adds that the device taught by Jeneve comprises a bar with slidably mounted handgrips that are mounted to move in only an axial direction parallel to the bar’s longitudinal axis (see Jeneve, paragraph 0008). Jeneve primarily teaches a resistance exercise device to facilitate muscle development and maintenance. There is no motivation to combine one or both of Smith, a leg stretch exercising device and Albergo, an arm and leg stretching device, with a resistance exercise device. Particularly, there is no motivation for a person of ordinary skill in the exercise arts to combine one or more of upright structures intended to support body weight with a freely grippable apparatus intended to provide resistance to such

weight. Combining the teachings of Smith, Albergo and Jeneve would create a large structure disposed between floor and ceiling surfaces upon which the user can engage in resistance exercises with an elongate bar having slidable handgrips. Thus, Smith, Albergo and Jeneve, either alone or in combination, do not render claim 7 of the present invention obvious in view thereof.

**4. Rejection of Claims 8 and 9 Under Section 103(a)**

The Examiner has rejected claims 8 and 9 as being unpatentable over Smith in view of Albergo and further in view of US Patent No. 6,343,998 to Tarulli et al. ("Tarulli"). Applicant reiterates the above arguments with respect to Smith and Albergo and adds that a person of ordinary skill in the art would have no motivation to combine the teachings of Smith and Albergo with the teaching of Tarulli. Tarulli teaches an apparatus for enhancing a user's golf swing wherein pivotably mounted swing arms 61 extend "at approximately a right angle from the ends 59 of the extension 51 when the golf swing apparatus 10 is in use" (see Tarulli, column 3, lines 43 to 45). The present invention as taught in claims 8 and 9 neither requires nor suggests that such swing arms are necessary and in fact such swing arms would detract from the present invention's intent to train enhanced kicking capability over a broad range of motion (rather than constrict the range of motion as taught by Tarulli). It is likewise undesirable to provide a limb support portion as taught by the present invention on extension 51 of the Tarulli device. In addition, the height adjustment capability of the Tarulli device teaches away from that taught by Smith and would be insufficient for operation of the Albergo device. The addition of telescoping members (as required by claim 8 of the present invention) and at least one clamping member (as required by claim 9 of the present invention) does not alter this conclusion. Thus, no one in the exercise arts would look at Smith in combination with one or both of Albergo and Tarulli to teach the present invention as claimed in claims 8 and 9.

**5. Rejection of Claim 10 Under Section 103(a)**

The Examiner has rejected claim 10 of the present application as being unpatentable over Smith in view of Albergo and further in view US Patent No. 5,518,476 to McLeon ("McLeon"). Applicant repeats the arguments hereinabove and further repeats the arguments made in response to the previous Office Action. McLeon teaches a podiatric exercise apparatus. There is no teaching in McLeon for a truss-supported intussusceptible body in combination with a cross-bar having a limb receiving portion thereon. The indices taught by McLeon are specifically applied to the podiatric function thereof and include the elevation of handrail assembly 42 and the rotation of rocker support member 24. Even if a person of ordinary skill in the art would use the indices taught by McLeon on the support member taught by Smith or the elongate member taught by Albergo, such person would have no motivation to do so to arrive at the present invention. Such a combination would produce a ceiling-to-floor stretching apparatus that still lacks the cross member and limb support portion as taught by the present invention. Thus, Smith either alone or in combination with either or both of Albergo or McLeon, does not teach, disclose or suggest claim 10 of the present invention.

Applicant respectfully submits that the present claims are in condition for allowance. Applicant invites the Examiner to contact Applicant's undersigned representative should the Examiner have any questions or require further information regarding this application.

Respectfully submitted,



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